

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)
)
)
National Telecom PCS, Inc.,)
BTA Nos. B114, B476, and)
B492, Frequency Block C)

ORDER

Adopted: November 8, 1996

Released: November 12, 1996

By The Chief, Wireless Telecommunications Bureau:

1. By this action, we set forth the default and withdrawal payment obligations and procedures for National Telecom PCS, Inc. ("NatTel"), resulting from its failure to remit payment to cover both the required down payment on the license for which it was the successful high bidder and bid withdrawal payments for two licenses in the Broadband Personal Communications Services ("PCS") C Block auction. Pursuant to the Commission's rules, NatTel is both in default on its down payment obligation for one BTA license and subject to a bid withdrawal payment for two BTA licenses.¹ NatTel's total payment obligation is \$297,478.50. The default and bid withdrawal payment calculations are set forth in Attachment A to this Order.

2. Background. On May 6, 1996, the Commission concluded the Broadband PCS C Block auction. NatTel was the successful high bidder on one license in the auction (B-492, American Samoa), with a net bid totalling \$411,001.00. During the course of the auction, NatTel withdrew two high bids. On May 8, 1996, the Commission announced by *Public Notice*² that,

¹ See 47 C.F.R. §§ 24.704, 24.708. See also 47 C.F.R §§ 1.2104, 1.2109.

² "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716 (rel. May 8, 1996).

pursuant to Section 24.711(a)(2) of the Commission's rules,³ winning bidders would be required to submit their initial down payments of five percent of net winning bids by May 15, 1996. In addition to the down payment, pursuant to Section 24.704(a)(1),⁴ winning bidders whose upfront payments were insufficient to cover any withdrawal payments owed were also required to deposit the difference between their upfront payments and the withdrawal payments by the down payment deadline. NatTel's bid withdrawal obligation totaled \$101,620.00 for penalties assessed for withdrawn bids on License B-114 (\$78,375.00) and License B-476 (\$23,245.00).⁵ Consequently, under Section 24.711(a)(2), NatTel was obligated to supplement its \$50,000.00 upfront payment with an additional payment of \$72,170.05 by May 15, 1996, to bring its total payment to the Commission to \$122,170.05.⁶

3. On May 15, 1996, NatTel filed a Request for Waiver of Section 1.2104(g)(1), seeking waiver of the bid withdrawal payment applicable to the broadband PCS C block auction.⁷ On May 24, 1996, NatTel submitted a "Supplement to Request for Waiver."⁸ On May 30, 1996, the Wireless Telecommunications Bureau ("Bureau") denied NatTel's request, finding that NatTel had failed to meet the standards required to justify such a waiver.⁹ The Bureau also found that NatTel was in default on its payment obligations for the license on which it was the high bidder.

³ Section 24.711(a)(2) provides that "[e]ach winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted." 47 C.F.R. § 24.711(a)(2).

⁴ Section 24.704(a)(1) provides that "[a] bidder who withdraws a high bid during the course of an auction will be subject to a payment equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid." 47 C.F.R. § 24.704(a)(1).

⁵ See "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716 (rel. May 8, 1996).

⁶ See 47 C.F.R. § 24.711(a)(2).

⁷ NatTel, Inc., "Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction" (filed May 15, 1996).

⁸ NatTel, Inc., "Supplement to Request for Waiver" (filed May 24, 1996).

⁹ Request for Waiver of Bid withdrawal Payment for the Broadband PCS C Block Auction filed by NatTel, Inc., *Order*, DA 96-811 (rel. May 30, 1996) ("*Order*").

4. On May 30, 1996, the Bureau released a *Public Notice*¹⁰ announcing that the license on which NatTel had defaulted would be reaucted commencing July 3, 1996.¹¹ On June 7, 1996, NatTel filed an Application for Review of the Bureau's *Order* with the Commission. NatTel's Application for Review remains pending. On July 17, 1996, the Commission announced by *Public Notice* that the reauction of the licenses was complete.¹² The successful net high bid for this license is set forth in Attachment A to this Order.

5. Discussion. Default Payment. Under the Commission's rules, a bidder who fails to remit the required down payment for the licenses for which it was the high bidder within five business days after the Commission declares the auction closed shall be deemed to be in default on those licenses.¹³ The Commission's rules also provide that under such circumstances, the Commission will dismiss the bidder's long-form application.¹⁴ A defaulting bidder is subject to certain default payment obligations.¹⁵ Specifically, such bidder is required to pay the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission (so long as the subsequent winning bid is less than the amount bid), plus an additional payment equal to three percent of the defaulter's bid or the subsequent winning bid,

¹⁰ "18 Defaulted PCS Licenses To Be Reaucted; Reauction To Begin July 3rd," *Public Notice*, DA 96-872 (rel. May 30, 1996).

¹¹ Under Section 24.704(b), where a successful bidder defaults on its down payment obligations after the close of the auction, the Commission "may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids." 47 C.F.R. § 24.704(b). *See also* 47 C.F.R. § 1.2109(b).

¹² "FCC Announces Winning Bidders in the Reauction of 18 Licenses to Provide Broadband PCS in Basic Trading Areas: Auction Event No. 10," *Public Notice*, DA 96-1153 (rel. July 17, 1996).

¹³ Section 24.708(b) states that a bidder who defaults on a required payment will be subject to the consequences set forth in Section 1.2109. *See* 47 C.F.R. § 24.708(b). Section 1.2109(b) provides that "[i]f a license winner withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2). *See* 47 C.F.R. §§ 24.708, 1.2104(g), 1.2109.

¹⁴ 47 C.F.R. § 1.2109(b).

¹⁵ Section 24.704(a)(02) provides that:

[i]f a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to [a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license of offered by the Commission] plus an additional penalty equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount.

47 C.F.R. § 24.704(a)(2). *See also* 47 C.F.R. § 1.2104(g).

whichever is less.¹⁶ In the event that a license is reauctoned for an amount greater than or equal to the defaulted bid, the total default payment is equal to three percent of the defaulted bid.¹⁷ In the event that the default payment cannot be determined (*i.e.*, because a license has not yet been reauctoned), the Commission has indicated that a deposit may be assessed of up to 20 percent of the defaulted bid price.¹⁸ Finally, the Commission's payment rules provide that if a defaulting bidder does not submit the default payment assessed by the Commission in the time required, any amounts overdue "will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission."¹⁹

6. NatTel failed to remit the required initial down payment amount for the licenses for which it was the successful high bidder in the Broadband PCS C Block auction. As such, it is in default, and is subject to the default payment provisions specified in Sections 24.704(a)(2) and 1.2104(g) of the Commission's rules.²⁰ Under this formula, which is set forth in Attachment A to this Order, NatTel's total default payment due the Commission is \$245,858.50. This amount represents the total difference between NatTel's net winning bid on the license and the net amount for which that license was offered by the Commission in the C Block reauction (\$240,751.00),²¹ plus an additional three percent of either NatTel's bid or the winning bid in the C Block reauction, whichever is lower (\$5,107.50).²²

7. *Withdrawal Payment* Under the Commission's rules, a bidder who withdraws a bid prior to the close of an auction will be subject to a payment if the subsequent winning bid is lower than the withdrawn bid.²³ Specifically, such bidder is required to pay the difference between the amount bid and the amount of the winning bid the next time the license is offered by the

¹⁶ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g).

¹⁷ *Id.*

¹⁸ *Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd 5523 (rel. July 15, 1994) at n. 51. *See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) at ¶¶ 195-197; "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules," *Public Notice*, DA 96-481, 61 FR 16914 (rel. April 4, 1996).

¹⁹ 47 C.F.R. §§ 24.704(a)(2), 1.2104(g).

²⁰ *Id.*

²¹ The difference between net bids equals \$240,751.00 (NatTel's bid of \$411,001.00 compared to the reauction high bid of \$170,250.00).

²² In this situation, the winning bid in the C Block reauction was lower. Three percent of that bid totals \$5,107.50. *See* 47 C.F.R. § 24.704(a)(2).

²³ 47 C.F.R. § 24.704(a)(1).

Commission.²⁴ Finally, the Commission's payment rules provide that if a withdrawing bidder does not submit the withdrawal payment assessed by the Commission in the time required, any amounts overdue will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.²⁵

8. NatTel withdrew bids on two licenses -- Licenses B-114 (Dodge City, KS) and B-476 (Williston, ND) -- which subsequently had winning bids lower than the withdrawn bids. As such, it is subject to the withdrawal payment provisions specified in Sections 24.704(a)(1) and 1.2104(g) of the Commission's rules.²⁶ For License B-114 (Dodge City, KS), NatTel's withdrawn bid was \$241,000.00 (\$180,750.00 net bid). The final winning bid was \$136,500.00 (\$102,375.00 net bid). For License B-476 (Williston, ND), NatTel's withdrawn bid was \$648,000.00 (\$486,000.00 net bid). The final winning bid was \$617,007.00 (\$462,755.00 net bid).²⁷ In these instances, the bid withdrawal payment was calculated as the difference between the net withdrawn bid and the net winning bid.²⁸ The "net" bid is the bid submitted lowered by the 25% bidding credit available to small businesses. Under this formula, which is set forth in Attachment A to this Order, NatTel's total bid withdrawal payment due the Commission is \$101,620.00. This amount represents the total difference between NatTel's high bid on each license and the amount for which that license was offered by the Commission in the C Block auction.

9. Accordingly, NatTel's total payment obligation is \$347,478.50 (\$245,858.50 default payment plus \$101,620.00 bid withdrawal payment). Pursuant to Sections 24.704(a)(2) and 1.2104(g) of the Commission's rules, NatTel's \$50,000.00 upfront payment has been applied to the total payment. As a result, \$297,478.50 remains due on NatTel's payment obligations.

ORDERING CLAUSES

10. It is ORDERED that NatTel is assessed a default payment in the amount of \$245,858.50 and bid withdrawal payment in the amount of \$101,620.00 equalling a total assessed payment in the amount of \$347,478.50, as computed in Attachment A. It is FURTHER ORDERED that payment of \$297,478.50 of this amount is to be made in accordance with the instructions set forth in Attachment B to this Order **within thirty days** from the release date of this Order.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716 (rel. May 8, 1996).

²⁸ See 47 C.F.R. § 24.712(a).

11. It is FURTHER ORDERED that this Order shall be sent to the applicant by certified mail, return receipt requested. Action taken pursuant to delegated authority, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michele C. Farquhar
Chief, Wireless Telecommunications Bureau

Attachment A

WITHDRAWAL PAYMENT

License		Gross Withdrawn Bid	Net Withdrawn Bid	Gross Winning Bid	Net Winning Bid	Smaller of Gross-Gross and Net-Net
Dodge City, KS	B114	\$241,000.00	\$180,750.00	\$136,500.00	\$102,375.00	\$78,375.00
Williston, ND	B476	\$648,000.00	\$486,000.00	\$617,007.00	\$462,755.00	\$23,245.00
Total:						\$101,620.00

DEFAULT PAYMENT

License		C-Block National Telecom Net Bid	C-Block Reauction		Default Payment	
			High Bidder	Reauction Net Bid	Difference between Net Bids	3% of Defaulted Net bid or Reauction Net Bid *
American Samoa	B492	\$411,001.00	Westel, L.P.	\$170,250.00	\$240,751.00	\$5,107.50

Net Bid Difference	\$240,751.00
3% of Net Bid	\$5,107.50
Default Payment	\$245,858.50
Withdrawal Payment	\$101,620.00
Less Upfront Payment Received	\$50,000.00
Total Payment Assessed	\$297,478.50

* Whichever is less. See 47 C.F.R. §§ 24.704(a)(2), 1.2104(g).

ATTACHMENT B

The following information is being provided to assist you in making your payment.

PAYMENT BY WIRE TRANSFER

You must complete the FCC Remittance Advice (Form 159) when making your auction payment by wire transfer. Please fax a completed Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer. On the cover sheet of the fax, indicate "Wire Transfer - Auction Payment for Auction Event 10. Please indicate on the upper left hand corner of the Form 159 the lockbox number **"358850."** The purpose of the FCC Form 159 is to identify who you are, how much you are paying and what you are paying for. It allows the bank to accurately process your remittance. Failure to accurately complete your FCC Form 159 could result in a delay in processing your remittance. Before completing an FCC Form 159, read the instructions below.

- 1) You must complete all of the blocks in the Payor Information Section, (Blocks 1 through 10).
- 2) You must complete the following auction-specific information in blocks, 14(A), 15(A), 16(a) and 17(A). **14(A) - Payment Type Code**, enter the letters **"AWCD"**; **block 15(A) - Quantity**, enter "1"; **block 16(A) enter the amount you are remitting**; and **block 17(A) - FCC Code 1**, enter "10".

When wiring funds, please give your bank the following information:

ABA Routing Number: 043000261;
Receiving Bank: Mellon Pittsburgh;
BNF: FCC/AC--9116106;
OBI Field: (Skip one space between each information item) "AUCTIONPAY"; FCC
ACCOUNT NO: _____ (Exactly as on Form 159, Block #1);
PAYOR NAME (NatTel)
PAYMENT TYPE CODE: AWCD (Block #14);
FCC CODE 1:10

PAYMENT BY CASHIER'S CHECK

Each cashier's check and corresponding FCC Remittance Advice (Form 159) must be in an individual envelope and specifically addressed to: Mellon Bank, P.O. Box #358850, Pittsburgh, PA 15251-5850, Attn: Auction Payment.

If delivering an auction payment in person or by courier, the check and FCC Remittance Advice (Form 159) must be delivered to Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153-2713, Pittsburgh, PA 15259-0001, (Attn: Wholesale Lockbox Shift Supervisor).

For further information or assistance, please call Regina Dorsey, Chief, Billings and Collections Branch at (202) 418-1995